IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4869 OF 2003

Chandrakant G. Gadve .. Petitioner

versus

Deepak V. Bhave & Anr. .. Respondents

...

Mr.C.J. Sawant, Sr.Counsel i/b R.V. Govilkar for the petitioner.

Mr.A.V. Anturkar for the respondent.

CORAM : D.G. KARNIK, J

DATED : 31st August 2004

P.C:-

1. Heard the learned counsel for the parties.

2. A decree has been passed against the petitioner interalia on the ground that the petitioner was not using the suit premises for the purpose for

which they were let out for a continuous period of more than six months immediately prior to the institution of the suit (See section 13(1)(k) of the Bombay Rents Hotels Lodging and Houses Rates Control Act 1947)

3. The suit premises were let out for the purpose of business of selling sweet meats. The petitioner was permitted to use the suit premises for any other business, if required. The appellate Court has held that the premises were not used for any business but were used for the purpose of storing of the card board boxes. This finding is not assailed before me. It is however, submitted that the card board boxes are used for the purpose of vending of the sweet meats and therefore, the premises are used for the purpose of business of sweet meats. There is a difference between use of the premises for the purpose of business and incidently storing of the card board boxes or any packaging material therein and use of the premises solely and exclusive for the purpose of storage without any business use. The petitioner is not selling sweet meats in the suit premises and the business of sale of the sweet meats is carried out in different premises. Only the card board boxes are

stored in the suit premises. In other words, the suit premises are used only as a godown for storage which is contrary to the terms and conditions on letting. The suit premises were let out for the purpose of business of sweet meats and the petitioner was permitted to change the nature of the business if the circumstances so required. The suit premises were not let out for the purpose of storage and use as a godown.

4. Hence, I find no error in the judgement of the appellate Court holding that the suit premises were not used for the purpose for which they were let out for a period of more than six months immediately preceding the suit.

5. Petition rejected.

6. At the request of the learned counsel for the petitioner, operation of this order is stayed for a period of eight weeks.

D.G. KARNIK, J